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RUEHKH/AMEMBASSY KHARTOUM 0006
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DEPT FOR AF/PPD WHARTON, KEMP, STRASSBERGER
IIP MURPHY, DOMOWITZ
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SUBJECT: Kenya's Media: Part I - Overview and the New Media Law

¶1. (SBU) Summary. This is the first part of a four-part report on the state of the Kenyan Media. The parts are: 1) Overview and the new media law; 2) Radio Stations; 3) Media Houses and Cross Ownership; and 4) Role of the media and New Trends. Since the liberalization of the media industry in the late 90s, Kenya has seen impressive growth of both the broadcasting and print media. The role of the media during the 2007 post-election turmoil, particularly, that of vernacular stations, is still widely debated. The violence after the elections and the media's vigorous criticism of Kenya's leading politicians catalyzed the passage of a media law, which has created much unhappiness among the media. It is not clear if the GOK's Communications Commission of Kenya (CCK), even with the new media law in play, would be able to rein in politically well-connected media houses. Many also fear that the government could apply the new rules selectively to constrain critical reporting. End summary.

Vibrant Media

¶2. (SBU) The media industry in Kenya was largely state-controlled from 1963 to the late 1990s. In 1990, Kenya had three radio stations and two television stations, all state-owned and operated. When the government began de-regulating the media in the late 90s, the number of all forms of media grew rapidly, particularly FM radio stations. The mainstream print media today comprises five daily newspapers with a combined circulation of about 350,000. The first private TV station, KTN, was licensed in 1990. So far, the state owned KBC (Kenya Broadcasting Cooperation) remains the only nationwide broadcaster. Currently, there are twelve TV stations and over 100 radio stations in operation. As the liberalization of the media continued, the Kenyan media companies had to learn to survive in the fierce competitive environment that emerged. The result has been a vibrant media, which aggressively ventures into areas previously considered off-limits, such as official corruption and other abuses by government officials.

New Communications Act

¶3. (SBU) The media's willingness to shine a spotlight on GOK officials ' misdoings and the questionable role of some media outlets in the 2008 post-election violence catalyzed a new, potentially more restrictive media law, the Kenya Communications Act. The media reacted violently to clauses in the Act which they believed curbed media freedom. In addition to Section 88, which gave the Minister of Information power to dismantle a media outlet in the event of emergency, there were a series of newly-added clauses that would infringe upon media freedom. For instance, the Minister for Information was given unchallenged power to control media content. That control would be exercised through the power to "issue guidelines for programming codes." The act also conferred on the Minister power to grant, refuse or cancel broadcasting licenses on the basis, inter alia, of non-fulfillment of "such other conditions as may be prescribed" by the Minister. President Kibaki, who had signed the new bill on January 2, 2009, subsequently succumbed to pressure from the media and the Act's most controversial provisions including Section 88 were removed. The new "final" bill was passed by Parliament in May 2009.

What's in the New Regulations?

¶4. (SBU) The Communications Commission of Kenya (CCK), the government agency mandated to oversee the implementation of the new media law, circulated new regulations in late September. Dubbed the Kenya Communications Regulations of 2009, the new rules are considered to be the most ambitious attempt to shape broadcasting in Kenyan history. They seek to regulate broadcast content, technology, advertising, ownership and public interest issues. Chairman of the Media Council (media's own self-regulatory body), Wachira Waruru said, "The intentions for the new regulations were good" but they were "issued in a haphazard way without enough consultations with the media." Media owners met several times to strategize and fight back. Some of there concerns were following:

Intrusive and Overarching?

¶5. (SBU) The new regulations stipulates, "The Commission shall ensure that broadcasting services reflect the culture, needs and aspirations of the audience and or viewers, and such services provide appropriate amount of local content and include news and information in their programming as well as discussion on matters of national importance as may be prescribed by the Commission from time to time." It prohibits broadcaster from accepting sponsorships of news broadcasts, and from releasing informercials for a period exceeding three and half hours of the performance period in any day, during prime-time or during any break in the transmission of a children's program.

Licensing: Murky Business

¶6. (SBU) The two most contentious issues addressed by the regulations remain licensing and content monitoring.

In the past, licenses were issued by the Ministry of Information and Communication, while frequencies were allotted by the CCK. The new regulations have made the CCK solely responsible for both operations. Waruru agreed that this had to be the first step in

streamlining the licensing system.

¶7. (SBU) However, several media houses disagree. The most significant and potential controversial change was a proposal to introduce the one frequency per one broadcaster per spot rule -- "all licensees, except the public broadcaster shall not be assigned more than one broadcast frequency for radio or television broadcasting in the same coverage area." Its effect will be to force some of the major broadcasters to surrender frequencies already in their possession. According to Kiprono Kittony, Chairman of Radio Africa, the holding of more than one broadcast license is a pre-existing and non-negotiable issue, which the Kenyan government cannot revisit retrospectively.

¶8. (SBU) Although broadcasters are given five years to bring their operations in line with the new regulatory regime, powerful "hoarders" will resist because they have already invested millions in infrastructure, while their expansion plans were based on the multiple frequencies they have been holding. They argue that the government could not "roll back" the growth of the broadcasting industry which was done, not by the government, but by enterprising, hard-working and ingenious pioneers. Kittony maintains that if they have to "return" the frequencies and have to "dismantle" what has been already built, the Kenya media industry will suffer the set back. Media owners also question who then will have those frequencies, expressing their lack of confidence in the CCK's fairness and impartiality.

¶9. (SBU) The new CCK regulations also stipulates that a license

will be granted only to those who offer broadcasting services for at least eight continuous hours per day. No frequency is transferrable to another entity without the CCK's permission.

¶10. (SBU) The CCK sees things differently. Among the frequencies already issued, about 30 frequencies lie idle because the owners, not yet interested in operating a station immediately, keep them "just in case" when they may need to open a new station for political or other reasons. Many politicians are believed to be these owners. Some of them already have started operating their own stations. Others are reportedly planning to open stations before the next presidential elections in 2012.

¶11. (SBU) According to the CCK's Deputy Chairman, Francis Wangusi, the Nairobi area has exhausted the frequency spectrum and there is no new frequency to be had, while some frequencies are being unused. This situation not only precludes new aspiring broadcasters' entry to the market but also stifles healthy competition, says Michael Mumo, Managing Director of Capital FM. The phenomenal growth of the broadcasting industry meant an insatiable demand for the broadcast spectrum, leaving the CCK no choice but to deny a frequency to a "legitimate" broadcaster, because there are no more frequencies to be had.

Content Regulation

¶12. (SBU) The new regulations give the CCK authority to prescribe to broadcasters the time, type, and format of programs to be aired. It is stipulated, "A licensee shall not broadcast any matter which contains the use of offensive language, including profanity and blasphemy; presents sexual matters in an explicit and offensive manner; glorifies violence or depicts violence in an offensive manner; is likely to include or perpetuate hatred of vilify any person or section of the community on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community."

¶13. (SBU) The new regulations also require that news and information be presented in a balanced manner, without prejudice and be based on fact, not on opinion, rumor, supposition or allegation unless the broadcast is carried out in a manner that indicates these circumstances clearly. The CCK prescribes even

"proper" ways to conduct interviews.

¶14. (SBU) During an election period, "A licensee shall provide equal coverage and opportunities to political parties and candidates and shall not permit any broadcast sponsored by or made on behalf of a political party."

¶15. (SBU) Until now, program content has been self-regulated, with broadcasters abiding by a code of ethics established by the Media Council of Kenya and individual media houses' own editorial guidelines. Observance of standard practices such as the principle of the right to reply, fairness, and objectivity which had earlier been left to the media houses and the Media Council, are now regulated by the CCK and breaches will be punished. Media practioners feel that the CCK, a government-appointed authority, is unnecessarily empowered to prescribe what are matters of national importance and cultural needs of viewers and listeners. They fear that it is likely to be biased in favor of promoting the government.

Battle Looming

¶16. (SBU) Before the passage of the new media law, many had characterized the Kenyan media's impressive growth as proliferation without regulation. Few disputed the need to regulate the fast-growing broadcast industry and streamline its then murky practices. Particularly during the post-election violence, when

the media did not always play a helpful role, there was a consensus that some form of regulation was necessary. The crux of the problem, however, was the overwhelming mistrust of the government by the public and by the media. When the CCK circulated new regulations in late September to media practitioners, they were not amused.

¶17. (SBU) Rose Kimotho, Managing Director of K-24 and Kameme FM, criticized the government for "trying to infringe upon editorial independence of media houses." Linus Gitahi of the Nation Media Group suggested that each media house post its reaction on its website with suggested amendments. He questions, "What criterion wild be used to determine which licensees qualify for the national license? A subjective criterion will result in favoritism and bias."

Comment

¶18. (SBU) While the rapidly expanding media market in Kenya clearly needed better ground rules, how the government will implement them remains to be seen. One concern is that they may be more strictly applied to those media houses openly critical of the government. We remain in close contact with media and government officials, and have made clear our concern that any media laws and regulations not be biased in such a way as to intimidate or constrain legitimate media activity.
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